FOR ARGUMENT

IN THE

Supreme Court of the United States

October Term, 1978

No. 78-547

KAREN MARCHIONDO, *et al.*,
Appellants,

v.

NEALE V. CRANEY, *et al.*,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

REPLY BRIEF OF APPELLANTS

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INTRODUCTION

Appellees have argued (1) that the Washington Democratic State Committee is not a body whose activities lead to First Amendment protection for the party's choice of its composition or party members' rights to serve on it, (2) that RCW 29.42.020's interference with the composition of the Democratic State Committee imposes no substantial burden on either the party and its members or the appellants barred by the statute from serving on the state committee, and (3) that even if the statute does substantially burden First Amendment rights, it is necessary to serve a compelling state interest that cannot be satisfied by any less restrictive means. None of appellees' arguments has any merit.

The Democratic State Committee is the statewide governing body of the Washington Democratic Party between state party conventions. The state committee formulates and implements party policies, raises and distributes funds to party candidates, and carries on the entire range of political activities normally performed by the state committee of an American political party.

The Democratic State Committee's activities and functions, and party members' authorized participation on the committee, are plainly protected by the right of free political association under the First Amendment. RCW 29.42.020 substantially burdens the exercise of that right by forbidding the Washington Democratic Party from implementing its decision to add legislative district representatives to its state committee and by barring appellant legislative district representatives from taking their seats on that committee.

RCW 29.42.020's substantial burdens on First Amendment rights can be justified only if necessary to serve a compelling state interest that cannot be satisfied by less restrictive means. No state interest, compelling or otherwise, justifies RCW 29.42.020's rigid requirement that the Washington Democratic Party State Committee be composed of two county representatives from each county, no more, no less, and none other. Any state interest in the existence of the party's state committee or in its composition (although no such interest has been shown) could be satisfied by means far less restrictive than RCW 29.42.020's prohibition against legislative district representatives and rigid control of the composition of the Democratic Party's governing body.

ARGUMENT

I. The First Amendment Protects the Right of the Washington Democratic Party and Appellants to Organize and Participate in the Democratic State Committee

Appellants have shown that the association of party members for the purpose of forming and participating in the internal governing bodies of political parties is an integral part of the freedom of assembly, speech, and association protected by the First Amendment. Appellants' Br. at 11-15. Accordingly, appellants believe that the Washington Democratic Party and its members have a protected right to determine how the party's governing body—the Democratic State Committee—shall be composed, and to have duly elected party members participate in the decisions of that committee.

Appellees argue, however, that the Democratic State Committee performs no functions that give rise to First Amendment protection for the party's choice of the state committee's membership or for the right of duly-elected party members to participate in the committee's decisions. This argument rests on a substantial mischaracterization of the Democratic State Committee's functions and on a misapprehension of the nature of the right to free political association.

A. *The Democratic State Committee Exists to Formulate and Implement Democratic Party Policies, to Promote Election of Democratic Party Candidates, and Generally to Govern the Washington Democratic Party Between Conventions*

Appellants' opening brief summarized the functions of the Democratic State Committee as follows:

> Between state conventions, the Democratic State Committee is the statewide party governing body. It

> meets at least four times a year, exercises the party's policy making functions, directs the party's administrative apparatus, raises and distributes funds to Democratic candidates, conducts workshops to instruct candidates on effective campaign procedures and organization, and seeks generally to further the party's objectives of influencing policy and electing its adherents to public office.

Appellants' Br. at 4-5 (footnotes omitted). These functions plainly involve the kind of group political activity protected by freedom of association.

Appellees do not deny that the Democratic Party of Washington has charged the Democratic State Committee with the performance of these functions. Instead, appellees stress that state law does not explicitly require that some of these functions be delegated by the party to its state committee. *See* Appellees' Br. at 6. If appellees mean to suggest that the state committee is therefore somehow an apolitical entity, their theory is simply untenable. Under state law and party rule, as recognized and confirmed by the Washington Supreme Court, the state committee is an integral part of the political organization that is the Washington Democratic Party.

Even without an explicit delegation of authority from the party, the Democratic State Committee "is necessarily invested with the inherent power . . . to promulgate, subject to the overriding authority of the state convention, intraparty rules governing statewide operations of the party as a political organization during the interval between conventions." *King County Republican Central Committee v. Republican State Committee*, 79 Wn.2d 202, 212, 484 P.2d 387 (1971).

This inherent authority alone is sufficient to demonstrate that the Democratic State Committee is an integral part of the Democratic Party's political operations. Such inherent authority, however, is not the sole source of the state committee's authority and duties. As the court below expressly held, "the state convention is implicitly empowered to establish the permanent state organization of the party, create committees, [and] delegate authority . . . ." *Marchioro v. Chaney*, 90 Wn.2d 298, 313, 552 P.2d 487 (1978) (J.S. App. A—16), *quoting King County Republican Central Committee, supra*, 79 Wn.2d at 211. The Democratic State Convention has exercised this power and has adopted a party charter providing for party organization at all levels, including the Democratic State Committee, and has delegated authority within the organization, including delegations of authority to the state committee.

As the court below explicitly held, the party charter adopted by the Democratic State Convention is binding on the Democratic State Committee in the absence of valid constitutional or statutory prohibition to the contrary. *Marchioro v. Chaney, supra*, 90 Wn.2d at 313-14 (J.S. App. A—16-17). Appellees do not suggest that any statute or constitutional provision forbids the Democratic Party from delegating to its state committee the power and duty to perform those political activities normally associated with the body that governs the "statewide operations of the party as a political association between conventions." *King County Republican Central Committee, supra*, 79 Wn.2d at 212.

Article IV of the Washington Democratic Party Charter

expressly delegates policy-making and governing authority to the Democratic State Committee:

> Article IV
>
> ORGANIZATIONS OR OFFICIALS AUTHORIZED TO FUNCTION CONTINUOUSLY
>
> A. General: These organizations and officials are authorized by state statute, charter, or custom to function continuously *to govern party affairs and to make party policy* . . . .
>
> . . . .
>
> G. State Democratic Committee
>
> 1. The State Democratic Committee *shall be the governing body when the convention is in adjournment.*

Charter of the Democratic Party of Washington, art. IV (App. 8, 10) (hereinafter "Charter") (emphasis added). Article IV demonstrates beyond question that the Democratic State Committee is an integral part of the political organization of the Washington Democratic Party.

In addition to this general delegation of authority to manage the political operations of the Democratic Party's statewide organization between conventions, the charter contains specific examples of the Democratic State Committee's important policy and political functions. Article VI(B)(2) of the charter provides:

> In order to encourage full participation by all Democrats of the State of Washington with particular concern for minority groups, in the delegate selection process and in all party affairs, the State and County Democratic Party organization *shall adopt and implement affirmative action programs.*

Charter, art. VI(B)(2) (App. 16) (emphasis added).

As this Court is well aware, the term "affirmative action programs" encompasses a wide range of possible choices. The state committee's choice of affirmative action program

and the way in which it implements that program will most certainly influence the way in which the Democratic Party is perceived by the general public and the type and number of persons who choose to affiliate themselves with the party and to participate in its activities. This influence of the state committee on the composition of party membership and party meetings will in turn affect all future policy decisions and political activities of the party. In short, the authority delegated by Article VI(B)(2) of the charter gives the Democratic State Commitee a powerful role in shaping the present and future policies of the Washington Democratic Party.

Other important political functions delegated to the Democratic State Commitee pursuant to the charter's mandate that the committee organize and govern the State Democratic Party[1] include adoption of policy statements as standards for Democratic elected officials,[2] raising and disbursing monies for the continuing operation of the party,[3] and conducting candidate campaign workshops to instruct Democratic candidates on "effective campaign procedures and organization."[4]

The Democratic State Committee has not hesitated to exercise the authority delegated to it by the charter to further political objectives. In 1976 the committee raised and distributed $40,000 to various federal, state, and legislative Democratic campaigns. R., 1st Supp., 25-28. In 1977 the committee gave $15,000 to one Democratic congressional candidate and $10,000 to the Democratic Governor.

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1. Charter, art. IV(G)(1)-(2) (App. 10-11).
2. Charter, art. II(A)(1) (App. 6).
3. Charter, art. II(A)(6) (App. 7).
4. Charter, art. VII(C)(1) (App. 19).

Id. In exercising its authority to decide how and from whom to raise campaign funds and which Democratic candidates are to receive such funds, the Democratic State Committee controls the very lifeblood of the Washington Democratic Party. This activity unquestionably involves the exercise of protected First Amendment rights of expression and association. *See Buckley v. Valeo,* 421 U.S. 1, 14-23 (1976).

The Democratic State Committee's authority under the charter makes it the statewide spokesman for the party between party conventions, a power it also has not hesitated to exercise. For example, at a single meeting during the pendency of this suit, the state committee adopted seven resolutions placing the party on record as supporting or opposing statewide ballot measures on such diverse issues as limitation of gasoline taxes, establishment of a state women's commission, regulation of obscenity, and limiting appropriation of public waters.[5] Before the most recent general election, the state committee went on record opposing a highly controversial statewide ballot measure that prohibited busing of school children outside neighborhood school districts.[6]

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5. *See* Washington State Democratic Committee Minutes 3-4 (October 28, 1977). The committee voted to oppose Initiative 335 (ban on theaters and bookstores displaying obscene material); to oppose Initiative 348 (limitation on state gasoline taxes); to support Referendum 39 (voter registration by mail); to support Referendum 40 (establishing a state women's commission); to support Initiative 59 (limiting appropriations of public water); to support Senate Joint Resolution 113 (expanding district court jurisdiction); and to support House Joint Resolutions 55, 56, and 57 (regulating common carriers).

6. Washington State Democratic Committee Minutes 4 (September 23, 1978).

The broad authority exercised by the Democratic State Committee in speaking for the Washington Democratic Party is underscored by the committee's 1977 refusal, in open opposition to the party platform, to support Initiative 345, which proposed removal of Washington's sales tax on food and drugs. *See* Washington Democratic State Committee Minutes 3 (October 28, 1977); *Seattle Times,* November 1, 1977, at A14, col. 2-4 ("Tradition Discarded: State Demo Committee Opposes Food-Tax Repeal").

In short, the Democratic State Committee is, in every respect, precisely what the Democratic Party Charter and the Washington Supreme Court say it is: an integral part of the political organization of the Washington Democratic Party and that party's governing body between conventions. *See* Charter, art. IV(G)(1) (App. 8); *Marchioro v. Chaney, supra,* 90 Wn.2d at 302 (J.S. App. A—5); *King County Republican Committee, supra,* 79 Wn.2d at 211-12.

B. *Freedom of Association Protects the Washington Democratic Party's Choice of Its State Committee's Composition and Democratic Party Members' Participation on That Committee*

Where group activity is of a kind protected by freedom of association, that freedom includes the right of the group and its members to choose and implement the manner in which the group is to be organized and directed. Applicable precedent squarely holds that state action interfering with the internal organization and activity of political groups is subject to First Amendment scrutiny. *Cousins v. Wigoda,* 419 U.S. 477 (1975); *Fahey v. Darigan,* 405 F. Supp. 1386 (D.R.I. 1975); *Bates v. Little Rock,* 361 U.S. 516 (1960); *NAACP v. Alabama ex rel. Patterson,* 357 U.S. 449 (1958); *see Ripon Society v. National Republican Party,* 525 F.2d 567 (D.C. Cir. 1975) (*en banc*), *cert. denied,* 424 U.S. 933 (1976). These decisions plainly establish that the right of free political association protects the Washington Democratic Party's decision regarding the composition of its state committee and the right of duly-

elected party members to sit on that commitee. *See generally* Appellants' Br. at 11-15.

Appellees argue, however, that RCW 29.42.020's interference with the composition of the Democratic State Commitee is not subject to First Amendment scrutiny because the state committee is just an "internal body" of a political party. Thus, for example, appellees distinguish *NAACP v. Alabama ex rel. Patterson, supra,* and *Bates v. Little Rock, supra,* on the grounds that they involved only the right to be a member-at-large of political groups and not the "structure or membership of internal bodies within those groups." Appellees' Br. at 12.

On its face, appellees' theory is absurd. The First Amendment rights of political parties and their members include more than just the right to join the party and to vote on party policies in general meetings. The First Amendment protects the right to attempt to put party policies into practice by electing internal party bodies endowed with the authority and duty of implementing the party's goals and ideals. If states could control the membership of political party governing bodies, the freedom to associate as a political party would become virtually meaningless.

> Speeches and assemblies are after all not ends in themselves but means to effect change through the political process. If that is so, there must be a right not only to form political associations but to organize and direct them in the way that will make them most effective.

Ripon Society, supra, 525 F.2d at 585 (opinion for the court of McGowan, J.). Appellees' concept that the Democratic Party of Washington has no protected right to determine the composition of its internal governing bodies

makes a mockery of the rights of the party and all party members.

Appellees' theory is equally absurd if viewed from the perspective of those persons chosen to serve on a party's internal governing body, in this case the duly-elected legislative district representatives to the state committee. Under appellees' theory, a person has a protected right only to participate on the broadest level of party political activities: he has the right to speak in meetings of the general membership, but no right to act as chosen spokesman for the party and its members. The First Amendment cannot be so limited. Whatever the scope of its protections, it clearly protects the right of a person selected by his party co-members to represent them at party conferences and on higher organs of party government.[7]

Appellees' theory is not only untenable on its face, it is squarely contrary to precedent. *Cousins v. Wigoda, supra,* unequivocally rejects appellees' view of the First Amendment. In *Cousins,* the party made a choice as to who should represent Illinois party members at the party's national convention. This Court held that the party and its members had a protected right to determine who should act as representatives, and that the duly-elected representatives had a protected right to perform their party-authorized roles. *See* 491 U.S. at 487, 488-89.

Appellees attempt to limit *Cousins* by arguing that it holds protected only the right of parties to determine who

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7. The right of members to consult with each other in a fraternal organization necessarily includes the right to select a spokesman from their number who could be expected to give the wisest counsel. *Brotherhood of Railroad Trainmen v. Virginia State Bar,* 377 U.S. 1, 6 (1964).

shall participate in conventions that adopt party platforms and nominate candidates. *See* Appellees' Br. at 14-15. *Cousins* itself rejects this view. *Cousins* involved not only the participation of the Cousins delegates in the national convention, but also their participation in a post-convention caucus to elect the Illinois representatives to the Democratic National Committee. The Court held that the right of the party to determine who should participate in that caucus and the right of the Cousins delegates to serve in their authorized roles at the caucus was "analytically indistinguishable" from the right of the party to determine the composition of the convention and the right of the delegates to participate therein. 414 U.S. at 481 n. 3.

In short, appellees' theory that the First Amendment does not protect internal party governing bodies or protects only party bodies that adopt formal platforms and nominate candidates is both absurd on its face and squarely contrary to precedent.

In an attempt to construct an affirmative argument that the First Amendment does not protect the right of a political party and its members to determine the composition of party governing bodies, appellees cite *Runyon v. McCrary*, 427 U.S. 160 (1976). *See* Appellees' Br. at 15-16. *Runyon* stands for no such principle. There, a school claimed the right to engage in racial discrimination in choosing whom to admit as students. In holding this discrimination unprotected, this Court explained:

> [W]hile *"[i]nvidious private discrimination* may be characterized as a form of exercising freedom of association protected by the First Amendment . . . it *has never been accorded affirmative constitutional protections. . . ."*

427 U.S. at 176, *quoting Norwood v. Harrison*, 413 U.S. 455, 470 (1973). The right to associate for political purposes, by contrast, unquestionably is accorded affirmative constitutional protection. *E.g., Cousins v. Wigoda, supra; Kusper v. Pontikes*, 414 U.S. 51 (1973); *NAACP v. Alabama ex rel. Patterson, supra* (association for the purpose of combating racial discrimination).

The Washington Democratic State Committee is endowed with the power and authority to govern the party between conventions. As an integral part of the Democratic Party's political organization, the state committee is expressly authorized to make policy and engage in political activity. It is subject to the overriding control of the party's state convention, but its day-to-day decisions profoundly influence the way in which the party is perceived by the public, and strongly affect the extent to which the party is effective in promoting its goals and ideals and in electing candidates who share its goals and ideals. The First Amendment plainly protects the right of the Democratic Party and its members to determine the number and geographic constituencies of the members of the Democratic State Committee and the right of those appellants duly-elected as legislative district representatives to the committee to take their seats and participate fully in the committee's decisions.

II. RCW 29.42.020 Substantially Burdens the First Amendment Rights of the Washington Democratic Party and Its Members and the Rights of Appellant Legislative District Representatives

The Washington Democratic Party at its 1976 State Convention decided that the party's political activities between conventions should be directed by a state committee composed of two persons elected from each of Washington's

39 counties plus one person elected from each of the state's 49 legislative districts. *See* Charter, art. IV(G)(4) (App. 11). RCW 29.42.020, as construed by the Washington Supreme Court, prevents the party from implementing this decision by requiring that the state committee be composed of two county representatives from each county, no more, no less, and none other. The statute thus bars implementation of the party's choice and also bars individual appellant legislative district representatives from holding office on the state committee.

A. *RCW 29.42.020 Substantially Burdens the First Amendment Rights of the Washington Democratic Party and All of Its Members*

Appellees do not deny that RCW 29.42.020 prevents the party from implementing its decision regarding the composition of the party's state committee. Appellees claim, however, that the impacts of that restraint impose no substantial burden on First Amendment rights. Appellees' arguments are entirely without merit.

Appellees' primary response to appellants' showing of the substantial burdens imposed by RCW 29.42.020 is simply to deny again that the Washington Democratic Party and its members have any right to choose the composition of the party's governing body. Appellees state, for example:

> Appellants' third allegation of substantial burden is that RCW 29.42.020 burdens "the Democratic Party's right to decide for itself how it shall be governed." (Br. A., 17). Again, appellees reject the notion that such a right exists, for the reasons already discussed.

Appellees' Br. at 20; *see also* Appellees' Br. at 19 (the party has no right to determine the composition of its

internal party organs; the party has no right to administer itself in the way that the membership determines would best further their ideals and goals).

Although appellees' reasoning is somewhat unclear, they appear to base these startling assertions on a belief that *Runyon v. McCrary*, 427 U.S. 160 (1976), holds that the First Amendment does not protect the right of political parties to determine the size and composition of their internal governing bodies. *See* Appellees' Br. at 19. As discussed above, *Runyon* cannot possibly be twisted to support this interpretation. *Runyon* held that Congress can forbid a private school from rejecting potential students on the basis of their race because invidious private racial discrimination is not entitled to affirmative constitutional protection. *See* p. 12, *supra*.

By contrast, the right of political groups to govern themselves as they see fit has traditionally been recognized as deserving of affirmative constitutional protection, and the Democratic Party of Washington has engaged in no invidious discrimination in attempting to make its governing body more representative. Appellees' attempt to elevate *Runyon* into a *carte blanche* for state regulation of political party governing bodies is wholly without merit.[8]

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8. Appellees also cite, without discussing, *United States v. Brown*, 381 U.S. 437 (1965), in which the Court stated, in *dicta*, that Congress can regulate the membership of labor unions to exclude from positions of power persons who are likely to use the unions to call strikes for the purpose of overthrowing the government of the United States by force. The *dicta* in *Brown* derives from the decision in *American Communications Association v. Douds*, 339 U.S. 382 (1950), in which the Court ruled that Congress' interest in preventing strikes aimed at the overthrow of the government justified a law denying labor unions the benefit of the Labor Management Relations Act unless each officer of the union executed an affidavit stating that he was not a member of the Communist

[Footnote continued to the following page]

Appellees also assert that even if the Democratic Party and its members have a protected right to determine the composition of the Democratic State Committee, RCW 29.42.020 imposes no substantial burden on that right. *See* Appellees' Br. at 20-21. This argument simply ignores reality. RCW 29.42.020's statutory formula allows counties containing less than 9 percent of Washington's population to elect a majority of the Democratic State Committee's members, while counties containing a majority of the state's population may elect only 8 percent of the members. Under the Democratic Party's charter formula, party members in counties containing a majority of the state's population would elect 27 percent of the state committee's membership. *See generally* Appellants' Br. at 17-18. This dramatic difference between the composition of the state committee chosen by the Democratic Party and that imposed on the party by RCW 29.42.020—a difference appellees do not deny—constitutes an obvious substantial burden on the right of the party and its members to determine the composition of the party's governing body.

The protection that the First Amendment affords to a political party's choice of composition of internal party governing bodies reflects an elementary political fact: the composition of a decision-making body will influence the

Party and did not believe in or teach the overthrow of the United States Government by force. The principle of *Douds*, that a compelling interest in preventing the overthrow of the government by force can justify limiting the membership of a political group, can hardly be said to strip the Washington Democratic Party of all First Amendment protection. The protection is there. If appellees could prove that the participation of the legislative district representatives on the state committee would create a serious risk that the government would be overthrown by force, then RCW 29.42.020 might be justified. As discussed below, however, appellees suggest no such compelling state interest in support of the statute. *See* Part III *infra*.

decisions that body makes. RCW 29.42.020 forces the Democratic State Committee to be composed only of members with county-wide constituencies and imposes on that committee a pronounced rural bias. The party has ordered that the rural bias be reduced[9] and that representatives of legislative districts be included in the committee's decisions. The party's choice clearly reflects a determination that the party-mandated composition will arrive at decisions more reflective of party policy and better calculated to advance the party's interests than will a committee composed under the formula mandated by RCW 29.42.020.

The facts of this case demonstrate unequivocally the political significance of the Washington Democratic Party's choice regarding the composition of its state committee. Although the charter adopted by the 1976 Democratic State Convention imposes specific duties and responsibilities on the Democratic State Committee apart from the composition provision at issue here, that committee, as composed under RCW 29.42.020's statutory formula, flatly refused to acknowledge the binding character of any of the charter's provisions. An order of the Washington Supreme Court was required simply to persuade the state committee that it is subject to the charter. *See Marchioro v. Chaney, supra*, 90 Wn.2d at 312-14 (J.S. App. A—15-17).

9. Under RCW 29.42.020's statutory formula for the state committee's composition, "the vote of one Democrat in Garfield County has an influence in the state committee equal to the votes of nearly 400 Democrats in King County." 90 Wn.2d at 318 (J.S. App. A-21) (Horowitz, J. dissenting).

The state committee composition chosen by the Democratic Party in Article IV(G)(4) of the party charter reduces this disparity *tenfold* so that the vote of one Democrat in Garfield County will equal only the votes of approximately 44 Democrats in King County. *See* State of Washington, Office of Program Planning and Fiscal Management, *State of Washington Pocket Data Book* 255-58 (1976).

Unless the party is allowed to implement its choice of the state committee's composition, the party will have no way, short of endless litigation, of ensuring that the state committee will in fact obey the charter to which it has been declared subject.

The composition of the governing body of the Washington Democratic Party is obviously a choice of enormous political significance in the State of Washington. By preventing the party from implementing its choice in this matter, RCW 29.42.020 substantially burdens the right of the Democratic Party and all its members to free political association. *Cousins v. Wigoda, supra,* 419 U.S. at 481 n. 3, 487-88, 490 (1975); *id.* at 491-92 (Rehnquist J., concurring); *Fahey v. Darigan,* 405 F. Supp. 1386, 1398 (D.R.I. 1975); *see Bates v. Little Rock,* 361 U.S. 516 (1960); *NAACP v. Alabama ex rel. Patterson,* 357 U.S. 449 (1958). Appellees' stubborn denial that this substantial burden exists is entitled to no respect.

B. *RCW 29.42.020 Substantially Burdens the Right of Appellant Legislative District Representatives to Participate in the Activities of the State Committee*

Appellees openly admit that RCW 29.42.020 prohibits appellant legislative district representatives from participating in the decisions of the state committee. *See* Appellees' Br. at 22. Appellees deny, however, that this prohibition imposes a substantial burden on any rights protected by freedom of association. *Id.*

The concept that a person's right to free political association is not substantially burdened when the state bars him from engaging in lawful, party-authorized political activities is squarely contrary to applicable precedent. The state committee is a party body that engages in political

activities. The party has authorized appellant legislative district representatives to serve on that body and engage in those activities. If a person's First Amendment rights are substantially burdened when he is merely discouraged from acting as a simple party member, *NAACP v. Alabama ex rel. Patterson, supra,* and when he is barred from a convention and post-convention caucus, *Cousins v. Wigoda, supra,* it can hardly be said that his rights are not substantially burdened when he is totally barred from his party-authorized role on the party's governing body.

III. RCW 29.42.020's Restrictions on the Size and Geographic Composition of the State Committee Serve No Compelling State Interest That Cannot Be Satisfied by Less Restrictive Means

RCW 29.42.020's requirement that the Democratic State Committee be composed of two county representatives per county, no more and no less, substantially burdens appellants' First Amendment rights. Accordingly, the requirement can withstand constitutional scrutiny only if it is shown to be necessary to satisfy a compelling state interest that cannot be satisfied by less restrictive means. *See* Appellants' Br. at 23-24. Appellees have suggested no state interest, compelling or otherwise, that justifies a rigid requirement that the party's state committee be composed of two county representatives per county, no more, no less, and none other.[10]

Appellees' assertions of state interest consist mostly of repetitions of the litany that the state has a compelling interest in "an orderly and stable electoral process and

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10. As discussed in appellants' opening brief, appellants do not challenge RCW 29.42.020's requirement that the Washington Democratic Party maintain a state committee, and that requirement will not be affected by the relief sought here. *See* Appellants' Br. at 6-7 n. 14; *Marchioro v. Chaney, supra,* 90 Wn.2d at 302-03 (J.S. App. A–5-6).

political system," Appellees' Br. at 25, or in "the integrity, stability, and responsibility of major political parties." *Id.* The identification of a state interest in this general area, however, does not justify all regulation undertaken in the name of that interest. Appellees make no attempt to relate the requirement of "two county representatives per county" or its consequent prohibition against the seating of legislative district representatives to any legitimate state interest in stability of elections or political parties, and no such relation can be found. Appellees' litany of compelling state interests at best shows only a state interest in requiring that the party maintain a designated state committee—a requirement that is not challenged here.[11]

Appellees make only one attempt to identify a state interest that even arguably relates to the requirement that the party maintain no more, no less, and none other than two county representatives per county on the state committee. Appellees argue that because the county auditor of each county is the supervisor of virtually all primaries and elections, the state committee will relate better to the county auditors if the committee members are elected from each county. *See* Appellees' Br. at 29. This alleged state interest is insufficient on at least two independent grounds.

First, the existence of this alleged state interest, which is not even compelling on its face, is entirely unsubstantiated. Nothing in the record or Washington law even suggests that the state has a preference for (let alone a compelling state interest in) whether the state committee's contacts with county election officials are carried on by someone from the same county as the official or by some other designated party member.[12]

11. Appellees suggest later in their brief that the numerical committee size resulting from RCW 29.42.020's composition requirement is somehow important. *See* Appellees' Br. at 29. Appellants believe that states have no legitimate interest in deciding for political parties what size governing body is best for the party. Even if this interest were legitimate, however, it would justify only regulation of the maximum size of a party state committee, not RCW 29.42.020's rigid formula of two county representatives per county, no more, no less, and none other.

Second, even assuming that there were a need for the state committee to have at least one member with the same constituency as each county auditor, this need would justify only a requirement that the state committee contain *at least* one person from each county. The challenged provision, which requires that the state committee consist of two persons elected on a county-wide basis from each county, no more, no less, and none other, is substantially more restrictive than any regulation designed to meet the alleged need.

King v. Willis, 333 F. Supp. 670 (D. Del. 1971), cited by appellees in support of their claim that the challenged restrictions are necessary to satisfy a compelling state interest, shows nothing of the kind. That case demonstrates the proper sensitivity to the requirement that state interference with political party organization be the least restrictive means of satisfying state interests. In that case, a candidate for President challenged a Delaware law that required political parties to elect a state committee in order to qualify to place a candidate on the ballot. The court expressly

12. Indeed, RCW 29.42.020's composition requirements have nothing whatever to do with state electoral processes because those requirements are subject to a federal court order mandating that on the rare occasions when the committee performs state electoral functions, it must operate on the basis of one person, one vote. *See Cunningham v. Washington State Democratic Committee*, Civ. No. C 75-901 (W.D. Wash., permanent injunction entered November 28, 1977); Appellants' Br. at 5 n. 11.

noted that the size of the required state committee was not fixed by statute and was presumably left to the discretion of the party state convention. 333 F. Supp. at 674. With that in mind, the court held that the state had a crucial interest in requiring that the party maintain a permanent organization from which the voters could learn the qualifications and policies of the party and, to that end, that the state could insist that the candidate "be backed by some minimal and visible State Committee organization." 333 F. Supp. at 675.

Here, appellants do not challenge RCW 29.42.020's requirement that the Democratic Party maintain some sort of permanent statewide governing body that can provide voters with a continuing source of information on the party's qualifications and positions between conventions. Appellants do challenge the requirement that the party's governing body be composed of two county representatives from each county, no more, no less, and none other. No state interest, compelling or otherwise, requires this rigid limitation on the Washington Democratic Party's choice of the composition of its state committee.[13]

13. Appellees also cite the election laws of a number of other states in an attempt to assert that experience in other states demonstrates that control of the composition of party state committees serves a compelling state interest. Appellees' Br. at 26-27 n. 11. Appellees' citations are at best incomplete. As listed in detail in Appendix A hereto, twenty states leave the composition of party state committees entirely to the discretion of the party. Another four states require a minimum number of members, but leave the party free to add whomever it chooses. In fourteen states, state law requires that the state committee be elected on a formula based on one person, one vote—a required composition that may satisfy some compelling state interest but that most surely is not involved here. Only twelve states, including Washington, require a state committee composition that is not either left to party discretion or premised on one person, one vote.

CONCLUSION

The First Amendment protects the right of appellant party members and officers to organize and participate in the Washington Democratic State Committee. RCW 29.42.020's rigid requirement that the committee be composed of two county representatives from each county, no more and no less, substantially burdens appellants' First Amendment rights to implement the party's decision regarding the composition of its state committee and to serve in their party-authorized positions on that committee. No state interest justifies RCW 29.42.020's drastic interference with appellants' rights to free political association.

The judgment of the Washington Supreme Court holding constitutional the size and geographic composition requirements of RCW 29.42.020 as applied to the Democratic Party of Washington should be reversed.

Respectfully submitted

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APPENDIX A

The following twenty states either explicitly or implicitly leave the composition of party state committees to the discretion of the parties:

Alabama (Ala. Code tit. 17, § 16-8); Alaska (Alaska Stat. § 15.25.130); Arkansas (Ark. Stat. Ann. § 3-102); Connecticut (Conn. Gen. Stat. Ann. § 9-374 (West)); Delaware (Del. Code tit. 15, § 101(13)); Florida (Fla. Stat. Ann. § 103.091 (West)); Georgia (Ga. Code Ann. § 34-902); Hawaii (Haw. Rev. Stat. § 11-61); Kentucky (Ky. Rev. Stat. Ann. § 118.015 (Baldwin)); Maine (Me. Rev. Stat. tit. 21, § 401(2)(d)); Minnesota (Minn. Stat. Ann. § 202A.12 (West)); Nebraska (Neb. Rev. Stat. §§ 32.554, 32.556); New Hampshire (N.H. Rev. Stat. Ann. § 56:63); New Mexico (N.M. Stat. Ann. §§ 3-7-2, 3-7-3(d)); New York (N.Y. Elec. Law § 2-102 (McKinney)); North Carolina (N.C. Gen. Stat. § 163-96); Oklahoma (Okla. Stat. Ann. tit. 26, §§ 1-107, 1-108 (West)); Pennsylvania (Pa. Stat. Ann. tit. 25, § 2834 (Purdon)); Rhode Island (R.I. Gen. Laws § 17-12-2); Virginia (Va. Code § 24.1-172).

The following four states require a minimum composition of party state committees but leave the addition of members to the discretion of the party:

Massachusetts (Mass. Gen. Laws ch. 52, § 1); Nevada (Nev. Rev. Stat. § 293.153); Wisconsin (Wis. Stat. Ann. § 8.18 (West)); Wyoming (Wyo. Stat. §§ 22-4-105, 22-4-110).

The following fourteen states require that party state committees be elected on one person, one vote principles:

Arizona (Ariz. Rev. Stat. § 16-233); Illinois (Ill. Rev. Stat. ch. 46, § 7-8(a)); Indiana (Ind. Code Ann. § 3-1-2-1 (Burns)); Iowa (Iowa Code § 43.111); Louisiana (La.

Rev. Stat. § 18.285(1)(a)); Michigan (Mich. Stat. Ann. § 6.1597); Mississippi (Miss. Code § 23-1-3(a)); Missouri (Mo. Rev. Stat. §§ 115.621-.623); North Dakota (N.D. Cent. Code § 16-17-11); Ohio (Ohio Rev. Code Ann. § 3517.03 (Page)); Tennessee (Tenn. Code Ann. § 2-1304); Texas (Tex. Elec. Code Ann. art. 13.38 (Vernon)); Utah (Utah Code Ann. § 20-4-2(2)); West Virginia (W. Va. Code § 3-1-9).

The following twelve states impose a state committee composition that is neither left to the discretion of the party nor based on one person, one vote:

California (Cal. Elec. Code Ann. §§ 8660-8675 (West)); Colorado (Colo. Rev. Stat. § 1-14-108(2)); Idaho (Idaho Code § 34-504); Kansas (Kan. Stat. Ann. § 25-3804); Maryland (Md. Ann. Code art. 33 § 11-2); Montana (Mont. Rev. Codes Ann. § 13-38-203); New Jersey (N.J. Rev. Stat. Ann. 19:5-4 (West)); Oregon (Or. Rev. Stat. § 248.075(1)); South Carolina (S.C. Code § 7-9-90); South Dakota (S.D. Compiled Laws Ann. § 12-5-16); Vermont (Vt. Stat. Ann. tit. 17 § 730); Washington (Wash. Rev. Code Ann. § 29.42.020).